

Appl. No. : 10/748,729
Filed : December 29, 2003
Docket : EXCEL.016REC1

REMARKS

Claims 18-24, 26-39 and 41-48 are now pending in the application. Original Patent Claims 1-17 were cancelled in Applicant's response dated December 13, 2004.

Allowable Subject Matter and Oath/Declaration

Per the Office Action, the only basis for rejection for now-pending Claims 18-24, 26-39 and 41-48 is a defective reissue Oath/Declaration (see Pars. 1 and 2 of the Office Action). Applicant notes also that no required action or rejection is set forth pursuant to Par. 3 of the Office Action.

By this paper, and in response to Pars. 1 and 2 of the Office Action, Applicant herewith submits (i) a Reissue Application Second Supplemental Declaration by the Assignee; and (ii) a Reissue Application Second Supplemental Declaration by the Inventor. Applicant submits that these documents include all necessary statements, averments, and information to overcome the Examiner's rejections of Pars. 1 and 2 of the Office Action.

Applicant notes that the original prosecuting attorney did not appreciate the full scope of the invention with respect to the prior art, and therefore claimed too narrowly, in particular with respect to *inter alia*, original independent Claims 1, 10 and 13 of U.S. 6,212,259. These claims each included, *inter alia*, a preamble which ostensibly limited the Claim to certain frequency ranges and/or applications, and hence claimed less than patentee had the right to claim in the patent.

Applicant submits that these statements are also incorporated in the accompanying Oath/Declaration(s) and comply with 37 CFR 1.175 and MPEP § 1414 and therefore overcome the Examiner's objections.

Hence, Applicant submits that Claims 18-24, 26-39 and 41-48 as presented herein are in condition for allowance.

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Amendments to Claims

In response to Par. 3 of the Office Action, Applicant has herein submitted Claims 18-24, 26-39 and 41-48 as filed with the Response to Office Action on December 13, 2004. Applicant believes these Claims to be in the form specified by the Examiner.

Applicant has not submitted the claims as filed with the Response to Notice of Non-Compliant Amendment on June 17, 2005, and received by the Patent Office on June 20, 2005. Applicant was notified in a telephone conference with Tracie Robertson, USPTO Legal Instruments Examiner (LIE) on June 20, 2005, to disregard the Notice of Non-Compliant Amendment dated May 17, 2005 in its entirety. Thus, Applicant has herein presented the Claims as they stood immediately prior to the improperly issued Notice of Non-Compliant Amendment.

Information Disclosure Statement (IDS)

Applicant submits herewith an IDS and PTO Form 1449 citing twenty-two (22) references for consideration by the Examiner.

Summary

Based on the foregoing, Applicant submits that all pending claims are in condition for allowance, and all objections have been overcome. Applicant respectfully requests that the Examiner pass this case to issuance at the earliest opportunity.

Other Remarks

Applicant hereby specifically reserves the right to prosecute claims of different scope in another continuation or divisional application.

Applicant notes that any claim cancellations or additions made herein are made solely for the purposes of more clearly and particularly describing and claiming the invention, and not for purposes of overcoming art or for patentability. The Examiner should infer no (i) adoption of a position with respect to patentability, (ii) change or narrowing in the Applicant's position with

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respect to any claim or subject matter of the invention, or (iii) acquiescence in any way to any position taken by the Examiner, based on such cancellations or additions.

If the Examiner has any questions or comments which may be resolved over the telephone, he is requested to call the undersigned at (858) 675-1670.

Respectfully submitted,

GAZDZINSKI & ASSOCIATES

Dated: October 3, 2005

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